



## VIRGINIA COMMISSION ON YOUTH

### Definition of Kinship Caregivers Study Findings and Draft Recommendations

*Presented to the Commission on Youth on October 17, 2012 for action on  
December 3, 2012*

Finding 1. There is confusion regarding kinship care and the definition of relatives or "kin".

- While § 63.2-100 of the *Code of Virginia* defines kinship care as "the full-time care, nurturing, and protection of a child by relatives," in Virginia, the definition of "relative" varies from program to program.
- For purposes of diverting children from foster care and, when parents agree to a relative placement as an alternative to foster care, a broad definition of relative may be helpful in allowing for case-by-case determinations.
  - A broad definition includes persons who are not related to the child but have an established relationship with the child versus a narrow definition that includes only blood relatives or those related by marriage or adoption.
- Federal law allows states to define relative for purposes of a Title IV-E Guardian Assistance Program (GAP) and will accept a reasonable interpretation of a relative. This may include limiting the term to include biological and legal familial ties including Tribal kin, extended family and friends, or other "fictive kin".
- A broad definition would allow flexibility for the different circumstances. A definition similar to Minnesota's, which states that a relative includes an individual with whom the child has resided or has had significant contact, ensures a placement that is best for the child.
- There must be different definitions for different situations. A broad definition may not be appropriate for certain circumstances such as termination of parental rights and custody determinations.

#### **RECOMMENDATION**

- 1.1 Amend § 63.2-100 of the *Code of Virginia* to specify that a relative may include anyone related to the child by blood, marriage, adoption or anyone with a significant existing relationship with the child; *OR***
- 1.2 Amend § 63.2-100 of the *Code of Virginia* to specify that a kinship caregiver may include anyone related to the child by blood, marriage, adoption or anyone with a significant existing relationship with the child; *OR***
- 1.3 Take no action on Finding 1.**

Finding 2. There is confusion regarding the categories of kinship care.

- Kinship care has been divided into "formal" or "public" kinship care (where a child welfare agency is involved) and "informal" or "private" kinship care (where the state is not involved).
- In Virginia, the majority of kinship care arrangements are "informal". However, there is no explanation of informal kinship care in statute or policy.
- In Maryland, "informal kinship care" is defined as a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services,

provides for the care and custody of the child due to a serious family hardship. COMAR § 13A.08.05.01.

- Statewide, there is inadequate documentation and no formal tracking of informal kinship care placements to support appropriate accountability measures.

## **RECOMMENDATIONS**

**None. No recommendation on Finding 2 was made by the study's Advisory Group.**

### **Finding 3. Virginia has no standardized policy or guidance on kinship diversion.**

- Kinship diversion occurs when local departments of social services (LDSS) facilitate the placement of a child with relatives to prevent a foster care placement when the child cannot remain at home with their parents.
- Local social service workers are typically tasked with the responsibility of evaluating potential kinship caregivers. Federal law, regulations, and guidance provide states with some flexibility in their approaches to kinship care. There is no guidance specifying when to conduct an assessment and which diversion cases require them.
- Some LDSS workers may conduct a preliminary check and then follow-up with a federal background check. Others may place the child with a relative before conducting any checks.
- LDSS may use safety plans to outline the service recommendations for the parent in order to regain care of her child. However, there is confusion about the legality of the safety plan.
- Additionally, when parents agree to a kinship arrangement to avoid an abuse and neglect proceeding, there is no defined procedure to ensure that the child returns home or achieves permanency. One study revealed that birth parents are less likely to complete case plan requirements for reunification when their children are placed with relatives.<sup>1</sup> This may be because these parents may feel less pressure to address the issues that led to their children's placement because they have access to their children and confidence in the ability of the relative to care for them.
- Kinship policies should be flexible regarding non-safety requirements. However, guidance regarding assessment and case management would be helpful to inform case decisions.

## **RECOMMENDATIONS**

- 2. Support the Virginia Department of Social Services (DSS) in the creation of foster care diversion in early prevention guidelines that provide guidance to LDSS workers on the role of the agency in diversion practice, safety considerations, relative notification, and the use of criminal and child protective services (CPS) checks.**
- 3. Support the Virginia Department of Social Services in the development of an assessment tools for the informal diversion of youth from foster care into family placements and request that DSS report on the progress on the implementation of the assessment tool to the Commission on Youth prior to the 2014 General Assembly Session.**
- 4. Take no action on Finding 3.**

### **Finding 4. Virginia's relative notification provisions are critical in promoting kinship care.**

- The *Fostering Connections Act* requires that, within 30 days after the removal of a child from the custody of his or her parent or parents, the state shall identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence.
- The *Code of Virginia* §§ 63.2-104 and 63.2-105 provide the statutory framework for collecting and maintaining information gathered during a child protective services (CPS) investigation, and for the release of such information and to whom it may be released.

<sup>1</sup> Green, R. (2004). The evolution of kinship care policy and practice. *Future of Children*, 14(1), p. 137.

- Persons identified in the *Code* who may receive information in the course of a CPS investigation are a parent, grandparent, or any other person when such parent, grandparent, or any other person would be considered by the local department as a potential caretaker of the child in the event the local department has to remove the child from the custodian.
- There is uncertainty as to how broadly the discretionary release of confidential information can be interpreted regarding the requirement to notify “all” relatives. Thus, it may be that not all adult relatives are notified regarding the child’s removal from their home. Frequently, the relatives who are not notified are the most stable placement option for the child.
- In Virginia, juvenile court judges are including instructions in their foster care prevention assessment orders that direct the parents to list all family members on both the mother’s and father’s side of the family. This is an effective mechanism to identify all family members and potential placement options.

## **RECOMMENDATIONS**

**None. The issues outlined in Finding 4 are addressed in Recommendations 2, 3, and 4.**

### Finding 5 – Informal kinship caregivers may find it difficult to obtain services for the children placed in their care.

- Many relatives do not want to subject themselves to the process of becoming a foster parent or the continued monitoring as foster parents. They just want to be family, not foster parents.
- When children are placed with a relative as an alternative to foster care, the only process available to the relative to gain legal authority over the child is to pursue legal custody.
- However, this may not be a viable option as it may be cost prohibitive to hire an attorney for representation in a custody proceeding. Additionally, it may be undesirable for the relative to testify that it is not in the best interest of the child to remain with the parent, thus pitting the parent against the relative.
- In general, guardianship is a formal legal arrangement granted by a court that gives another person the legal right to act on behalf of a child whose parents are dead, missing, or otherwise not able to care for the child.
- Guardianship is being used by other states because it allows kinship caregivers to provide permanency and stability without termination of parental rights. Protection of a child using guardianship may be particularly appropriate when the parent(s) will be temporarily absent from the child’s life and unable to provide care.
- Virginia has a standby guardianship law in which a parent may transfer guardianship of his or her child to a specific person under certain conditions.\*
- This law originated to address the needs of parents living with HIV/AIDS, a disabling condition, or a terminal illnesses who wish to plan a legally secure future for their children.
- A standby guardianship enables the parent to retain much of his or her authority over the child. However, the court must determine that the parent is a qualified parent.  
 “Qualified parent” means a parent who has been diagnosed, as evidenced in writing, by a licensed physician to be afflicted with a progressive or chronic condition caused by injury, disease or illness from which, to a reasonable degree of medical probability, the patient cannot recover.
- In Michigan there are three types of guardianships: temporary guardianship (until a hearing can be held), limited guardianship, and full guardianship.
  - Temporary guardianship is appointed when immediate decisions affecting the child’s health or welfare are required or when the child’s placement must be secured pending a full hearing on guardianship petition. The temporary guardian has all of the powers/duties of a limited guardian except the appointment expires after six months.
  - Limited guardianship is created when parents willingly suspend their parental rights for a specific period of time. In a limited guardianship, the custodial parent is required to file for the guardianship. It typically occurs when a parent consents to his or her child living with a

relative or another person. It allows for financial support to be provided to the limited guardian by the parent, for the safety and stability of the child, for visitation by the parent, a reunification plan, and grants legal authority to the limited guardian.

- Full guardianship does not require parental consent and may be petitioned by a third party (nonparent) interested in the welfare of the child. The court must decide that both parent(s) are unwilling or unable to care for the child to award full guardianship. The court may order the minor's parents to pay reasonable support and order reasonable visitation.

#### **RECOMMENDATIONS**

**None. No recommendation on Finding 5 was made by the study's Advisory Group.**